

with the month in which the partnership begins business.

**(2) Dispositions before close of amortization period**

In any case in which a partnership is liquidated before the end of the period to which paragraph (1)(B) applies, any deferred expenses attributable to the partnership which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.

**(3) Organizational expenses defined**

The organizational expenses to which paragraph (1) applies, are expenditures which—

(A) are incident to the creation of the partnership;

(B) are chargeable to capital account; and

(C) are of a character which, if expended incident to the creation of a partnership having an ascertainable life, would be amortized over such life.

(Added Pub. L. 94-455, title II, § 213(b)(1), Oct. 4, 1976, 90 Stat. 1547; amended Pub. L. 108-357, title VIII, § 902(c), Oct. 22, 2004, 118 Stat. 1651; Pub. L. 109-135, title IV, § 403(l), Dec. 21, 2005, 119 Stat. 2632.)

AMENDMENTS

2005—Subsec. (b)(1). Pub. L. 109-135 substituted “partnership” for “taxpayer” in introductory provisions and before “shall be allowed” in subpar. (A).

2004—Subsec. (b). Pub. L. 108-357 substituted “Deduction” for “Amortization” in heading, added par. (2), redesignated former par. (2) as (3), and amended heading and text of par. (1) generally. Prior to amendment, text of par. (1) read as follows: “Amounts paid or incurred to organize a partnership may, at the election of the partnership (made in accordance with regulations prescribed by the Secretary), be treated as deferred expenses. Such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the partnership (beginning with the month in which the partnership begins business), or if the partnership is liquidated before the end of such 60-month period, such deferred expenses (to the extent not deducted under this section) may be deducted to the extent provided in section 165.”

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to amounts paid or incurred after Oct. 22, 2004, see section 902(d) of Pub. L. 108-357, set out as a note under section 195 of this title.

EFFECTIVE DATE

Section 213(f) of Pub. L. 94-455, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 179, 704, 706, 707, and 761 of this title] shall apply in the case of partnership taxable years beginning after December 31, 1975.

“(2) SUBSECTION (e).—The amendment made by subsection (e) [amending section 704 of this title] shall apply to liabilities incurred after December 31, 1976.

“(3) SECTION 709(b) OF THE CODE.—Section 709(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as

added by the amendment made by subsection (b)(1) of this section) shall apply in the case of amounts paid or incurred in taxable years beginning after December 31, 1976.”

PART II—CONTRIBUTIONS, DISTRIBUTIONS, AND TRANSFERS

Subpart

- A. Contributions to a partnership.
- B. Distributions by a partnership.
- C. Transfers of interests in a partnership.
- D. Provisions common to other subparts.

SUBPART A—CONTRIBUTIONS TO A PARTNERSHIP

Sec.

- 721. Nonrecognition of gain or loss on contribution.
- 722. Basis of contributing partner's interest.
- 723. Basis of property contributed to partnership.
- 724. Character of gain or loss on contributed unrealized receivables, inventory items, and capital loss property.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title I, § 74(c), July 18, 1984, 98 Stat. 593, added item 724.

**§ 721. Nonrecognition of gain or loss on contribution**

**(a) General rule**

No gain or loss shall be recognized to a partnership or to any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership.

**(b) Special rule**

Subsection (a) shall not apply to gain realized on a transfer of property to a partnership which would be treated as an investment company (within the meaning of section 351) if the partnership were incorporated.

**(c) Regulations relating to certain transfers to partnerships**

The Secretary may provide by regulations that subsection (a) shall not apply to gain realized on the transfer of property to a partnership if such gain, when recognized, will be includible in the gross income of a person other than a United States person.

**(d) Transfers of intangibles**

**For regulatory authority to treat intangibles transferred to a partnership as sold, see section 367(d)(3).**

(Aug. 16, 1954, ch. 736, 68A Stat. 245; Pub. L. 94-455, title XXI, § 2131(b), Oct. 4, 1976, 90 Stat. 1924; Pub. L. 105-34, title XI, § 1131(b)(3), (5)(B), Aug. 5, 1997, 111 Stat. 979, 980.)

CODIFICATION

Another section 1131(b) of Pub. L. 105-34 enacted section 684 of this title.

AMENDMENTS

1997—Subsec. (c). Pub. L. 105-34, § 1131(b)(3), added subsec. (c).

Subsec. (d). Pub. L. 105-34, § 1131(b)(5)(B), added subsec. (d).

1976—Pub. L. 94-455 designated existing provisions as subsec. (a), added subsec. (a) heading “General rule”, and added subsec. (b).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2131(f)(3)–(5) of Pub. L. 94-455 provided that:

“(3) Except as provided in paragraph (4), the amendments made by subsections (b) and (c) [amending this section and sections 722 and 723 of this title] shall apply to transfers made after February 17, 1976, in taxable years ending after such date.

“(4) The amendments made by subsections (b) and (c) shall not apply to transfers to a partnership made on or before the 90th day after the date of the enactment of this Act [Oct. 4, 1976] if—

“(A) either—

“(i) a ruling request with respect to such transfers was filed with the Internal Revenue Service before March 27, 1976, or

“(ii) a registration statement with respect to such transfers was filed with the Securities and Exchange Commission before March 27, 1976,

“(B) the securities transferred were deposited on or before the 60th day after the date of the enactment of this Act [Oct. 4, 1976], and

“(C) either—

“(i) the aggregate value (determined as of the close of the 60th day referred to in subparagraph (B), or, if earlier, the close of the deposit period) of the securities so transferred does not exceed \$100,000,000, or

“(ii) the securities transferred were all on deposit on February 29, 1976, pursuant to a registration statement referred to in subparagraph (A)(ii).

“(5) If no registration statement was required to be filed with the Securities and Exchange Commission with respect to the transfer of securities to any partnership, then paragraph (4) shall be applied to such transfers—

“(A) as if paragraph (4) did not contain subparagraph (A)(ii) thereof, and

“(B) by substituting ‘\$25,000,000’ for ‘\$100,000,000’ in subparagraph (C)(i) thereof.”

## § 722. Basis of contributing partner's interest

The basis of an interest in a partnership acquired by a contribution of property, including money, to the partnership shall be the amount of such money and the adjusted basis of such property to the contributing partner at the time of the contribution increased by the amount (if any) of gain recognized under section 721(b) to the contributing partner at such time.

(Aug. 16, 1954, ch. 736, 68A Stat. 245; Pub. L. 94-455, title XXI, § 2131(c), Oct. 4, 1976, 90 Stat. 1924; Pub. L. 98-369, div. A, title VII, § 722(f)(1), July 18, 1984, 98 Stat. 974.)

### AMENDMENTS

1984—Pub. L. 98-369 inserted “under section 721(b)” after “gain recognized”.

1976—Pub. L. 94-455 inserted “increased by the amount (if any) of gain recognized to the contributing partner at such time” after “at the time of the contribution”.

### EFFECTIVE DATE OF 1984 AMENDMENT

Section 722(f)(2) of Pub. L. 98-369 provided that: “The amendments made by paragraph (1) [amending this section and section 723 of this title] shall take effect as if included in the amendments made by section 2131 of the Tax Reform Act of 1976 [Pub. L. 94-455].”

### EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment made by Pub. L. 94-455, see section 2131(f)(3)–(5) of Pub. L. 94-455, set out as a note under section 721 of this title.

## § 723. Basis of property contributed to partnership

The basis of property contributed to a partnership by a partner shall be the adjusted basis of

such property to the contributing partner at the time of the contribution increased by the amount (if any) of gain recognized under section 721(b) to the contributing partner at such time.

(Aug. 16, 1954, ch. 736, 68A Stat. 245; Pub. L. 94-455, title XXI, § 2131(c), Oct. 4, 1976, 90 Stat. 1924; Pub. L. 98-369, div. A, title VII, § 722(f)(1), July 18, 1984, 98 Stat. 974.)

### AMENDMENTS

1984—Pub. L. 98-369 inserted “under section 721(b)” after “gain recognized”.

1976—Pub. L. 94-455 inserted “increased by the amount (if any) of gain recognized to the contributing partner at such time” after “at the time of the contribution”.

### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in amendments made by section 2131 of the Tax Reform Act of 1976, Pub. L. 94-455, see section 722(f)(2) of Pub. L. 98-369, set out as a note under section 722 of this title.

### EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment made by Pub. L. 94-455, see section 2131(f)(3)–(5) of Pub. L. 94-455, set out as a note under section 721 of this title.

## § 724. Character of gain or loss on contributed unrealized receivables, inventory items, and capital loss property

### (a) Contributions of unrealized receivables

In the case of any property which—

(1) was contributed to the partnership by a partner, and

(2) was an unrealized receivable in the hands of such partner immediately before such contribution,

any gain or loss recognized by the partnership on the disposition of such property shall be treated as ordinary income or ordinary loss, as the case may be.

### (b) Contributions of inventory items

In the case of any property which—

(1) was contributed to the partnership by a partner, and

(2) was an inventory item in the hands of such partner immediately before such contribution,

any gain or loss recognized by the partnership on the disposition of such property during the 5-year period beginning on the date of such contribution shall be treated as ordinary income or ordinary loss, as the case may be.

### (c) Contributions of capital loss property

In the case of any property which—

(1) was contributed by a partner to the partnership, and

(2) was a capital asset in the hands of such partner immediately before such contribution,

any loss recognized by the partnership on the disposition of such property during the 5-year period beginning on the date of such contribution shall be treated as a loss from the sale of a capital asset to the extent that, immediately before such contribution, the adjusted basis of such property in the hands of the partner exceeded the fair market value of such property.

**(d) Definitions**

For purposes of this section—

**(1) Unrealized receivable**

The term “unrealized receivable” has the meaning given such term by section 751(c) (determined by treating any reference to the partnership as referring to the partner).

**(2) Inventory item**

The term “inventory item” has the meaning given such term by section 751(d) (determined by treating any reference to the partnership as referring to the partner and by applying section 1231 without regard to any holding period therein provided).

**(3) Substituted basis property****(A) In general**

If any property described in subsection (a), (b), or (c) is disposed of in a nonrecognition transaction, the tax treatment which applies to such property under such subsection shall also apply to any substituted basis property resulting from such transaction. A similar rule shall also apply in the case of a series of non-recognition transactions.

**(B) Exception for stock in C corporation**

Subparagraph (A) shall not apply to any stock in a C corporation received in an exchange described in section 351.

(Added Pub. L. 98-369, div. A, title I, §74(a), July 18, 1984, 98 Stat. 592; amended Pub. L. 104-188, title I, §1704(t)(63), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 105-34, title X, §1062(b)(3), Aug. 5, 1997, 111 Stat. 947.)

**AMENDMENTS**

1997—Subsec. (d)(2). Pub. L. 105-34 substituted “section 751(d)” for “section 751(d)(2)”.

1996—Subsec. (d)(3)(B). Pub. L. 104-188 substituted “Subparagraph” for “Subparagraph”.

**EFFECTIVE DATE OF 1997 AMENDMENT**

Section 1062(c) of Pub. L. 105-34 provided that:

“(1) **IN GENERAL.**—The amendments made by this section [amending this section and sections 731, 732, 735, and 751 of this title] shall apply to sales, exchanges, and distributions after the date of the enactment of this Act [Aug. 5, 1997].

“(2) **BINDING CONTRACTS.**—The amendments made by this section shall not apply to any sale or exchange pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange.”

**EFFECTIVE DATE**

Section 74(d)(1) of Pub. L. 98-369 provided that: “The amendment made by subsection (a) [enacting this section] shall apply to property contributed to a partnership after March 31, 1984, in taxable years ending after such date.”

**SUBPART B—DISTRIBUTIONS BY A PARTNERSHIP**

Sec.	
731.	Extent of recognition of gain or loss on distribution.
732.	Basis of distributed property other than money.
733.	Basis of distributee partner's interest.
734.	Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction.

Sec.	
735.	Character of gain or loss on disposition of distributed property.
736.	Payments to a retiring partner or a deceased partner's successor in interest.
737.	Recognition of precontribution gain in case of certain distributions to contributing partner.

**AMENDMENTS**

2004—Pub. L. 108-357, title VIII, §833(c)(5)(B), Oct. 22, 2004, 118 Stat. 1592, substituted “Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction” for “Optional adjustment to basis of undistributed partnership property” in item 734.

1992—Pub. L. 102-486, title XIX, §1937(b)(3), Oct. 24, 1992, 106 Stat. 3033, added item 737.

**§ 731. Extent of recognition of gain or loss on distribution****(a) Partners**

In the case of a distribution by a partnership to a partner—

(1) gain shall not be recognized to such partner, except to the extent that any money distributed exceeds the adjusted basis of such partner's interest in the partnership immediately before the distribution, and

(2) loss shall not be recognized to such partner, except that upon a distribution in liquidation of a partner's interest in a partnership where no property other than that described in subparagraph (A) or (B) is distributed to such partner, loss shall be recognized to the extent of the excess of the adjusted basis of such partner's interest in the partnership over the sum of—

(A) any money distributed, and

(B) the basis to the distributee, as determined under section 732, of any unrealized receivables (as defined in section 751(c)) and inventory (as defined in section 751(d)).

Any gain or loss recognized under this subsection shall be considered as gain or loss from the sale or exchange of the partnership interest of the distributee partner.

**(b) Partnerships**

No gain or loss shall be recognized to a partnership on a distribution to a partner of property, including money.

**(c) Treatment of marketable securities****(1) In general**

For purposes of subsection (a)(1) and section 737—

(A) the term “money” includes marketable securities, and

(B) such securities shall be taken into account at their fair market value as of the date of the distribution.

**(2) Marketable securities**

For purposes of this subsection:

**(A) In general**

The term “marketable securities” means financial instruments and foreign currencies which are, as of the date of the distribution, actively traded (within the meaning of section 1092(d)(1)).

**(B) Other property**

Such term includes—

(i) any interest in—

(I) a common trust fund, or

(II) a regulated investment company which is offering for sale or has outstanding any redeemable security (as defined in section 2(a)(32) of the Investment Company Act of 1940) of which it is the issuer,

(ii) any financial instrument which, pursuant to its terms or any other arrangement, is readily convertible into, or exchangeable for, money or marketable securities,

(iii) any financial instrument the value of which is determined substantially by reference to marketable securities,

(iv) except to the extent provided in regulations prescribed by the Secretary, any interest in a precious metal which, as of the date of the distribution, is actively traded (within the meaning of section 1092(d)(1)) unless such metal was produced, used, or held in the active conduct of a trade or business by the partnership,

(v) except as otherwise provided in regulations prescribed by the Secretary, interests in any entity if substantially all of the assets of such entity consist (directly or indirectly) of marketable securities, money, or both, and

(vi) to the extent provided in regulations prescribed by the Secretary, any interest in an entity not described in clause (v) but only to the extent of the value of such interest which is attributable to marketable securities, money, or both.

### **(C) Financial instrument**

The term “financial instrument” includes stocks and other equity interests, evidences of indebtedness, options, forward or futures contracts, notional principal contracts, and derivatives.

## **(3) Exceptions**

### **(A) In general**

Paragraph (1) shall not apply to the distribution from a partnership of a marketable security to a partner if—

(i) the security was contributed to the partnership by such partner, except to the extent that the value of the distributed security is attributable to marketable securities or money contributed (directly or indirectly) to the entity to which the distributed security relates,

(ii) to the extent provided in regulations prescribed by the Secretary, the property was not a marketable security when acquired by such partnership, or

(iii) such partnership is an investment partnership and such partner is an eligible partner thereof.

### **(B) Limitation on gain recognized**

In the case of a distribution of marketable securities to a partner, the amount taken into account under paragraph (1) shall be reduced (but not below zero) by the excess (if any) of—

(i) such partner’s distributive share of the net gain which would be recognized if

all of the marketable securities of the same class and issuer as the distributed securities held by the partnership were sold (immediately before the transaction to which the distribution relates) by the partnership for fair market value, over

(ii) such partner’s distributive share of the net gain which is attributable to the marketable securities of the same class and issuer as the distributed securities held by the partnership immediately after the transaction, determined by using the same fair market value as used under clause (i).

Under regulations prescribed by the Secretary, all marketable securities held by the partnership may be treated as marketable securities of the same class and issuer as the distributed securities.

## **(C) Definitions relating to investment partnerships**

For purposes of subparagraph (A)(iii):

### **(i) Investment partnership**

The term “investment partnership” means any partnership which has never been engaged in a trade or business and substantially all of the assets (by value) of which have always consisted of—

(I) money,

(II) stock in a corporation,

(III) notes, bonds, debentures, or other evidences of indebtedness,

(IV) interest rate, currency, or equity notional principal contracts,

(V) foreign currencies,

(VI) interests in or derivative financial instruments (including options, forward or futures contracts, short positions, and similar financial instruments) in any asset described in any other subclause of this clause or in any commodity traded on or subject to the rules of a board of trade or commodity exchange,

(VII) other assets specified in regulations prescribed by the Secretary, or

(VIII) any combination of the foregoing.

### **(ii) Exception for certain activities**

A partnership shall not be treated as engaged in a trade or business by reason of—

(I) any activity undertaken as an investor, trader, or dealer in any asset described in clause (i), or

(II) any other activity specified in regulations prescribed by the Secretary.

### **(iii) Eligible partner**

#### **(I) In general**

The term “eligible partner” means any partner who, before the date of the distribution, did not contribute to the partnership any property other than assets described in clause (i).

#### **(II) Exception for certain nonrecognition transactions**

The term “eligible partner” shall not include the transferor or transferee in a nonrecognition transaction involving a

transfer of any portion of an interest in a partnership with respect to which the transferor was not an eligible partner.

**(iv) Look-thru of partnership tiers**

Except as otherwise provided in regulations prescribed by the Secretary—

(I) a partnership shall be treated as engaged in any trade or business engaged in by, and as holding (instead of a partnership interest) a proportionate share of the assets of, any other partnership in which the partnership holds a partnership interest, and

(II) a partner who contributes to a partnership an interest in another partnership shall be treated as contributing a proportionate share of the assets of the other partnership.

If the preceding sentence does not apply under such regulations with respect to any interest held by a partnership in another partnership, the interest in such other partnership shall be treated as if it were specified in a subclause of clause (i).

**(4) Basis of securities distributed**

**(A) In general**

The basis of marketable securities with respect to which gain is recognized by reason of this subsection shall be—

- (i) their basis determined under section 732, increased by
- (ii) the amount of such gain.

**(B) Allocation of basis increase**

Any increase in basis attributable to the gain described in subparagraph (A)(ii) shall be allocated to marketable securities in proportion to their respective amounts of unrealized appreciation before such increase.

**(5) Subsection disregarded in determining basis of partner's interest in partnership and of basis of partnership property**

Sections 733 and 734 shall be applied as if no gain were recognized, and no adjustment were made to the basis of property, under this subsection.

**(6) Character of gain recognized**

In the case of a distribution of a marketable security which is an unrealized receivable (as defined in section 751(c)) or an inventory item (as defined in section 751(d)), any gain recognized under this subsection shall be treated as ordinary income to the extent of any increase in the basis of such security attributable to the gain described in paragraph (4)(A)(ii).

**(7) Regulations**

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations to prevent the avoidance of such purposes.

**(d) Exceptions**

This section shall not apply to the extent otherwise provided by section 736 (relating to payments to a retiring partner or a deceased partner's successor in interest), section 751 (relating to unrealized receivables and inventory

items), and section 737 (relating to recognition of precontribution gain in case of certain distributions).

(Aug. 16, 1954, ch. 736, 68A Stat. 245; Pub. L. 102-486, title XIX, § 1937(b)(2), Oct. 24, 1992, 106 Stat. 3033; Pub. L. 103-465, title VII, § 741(a), Dec. 8, 1994, 108 Stat. 5006; Pub. L. 105-34, title X, § 1062(b)(3), Aug. 5, 1997, 111 Stat. 947.)

REFERENCES IN TEXT

Section 2(a)(32) of the Investment Company Act of 1940, referred to in subsec. (c)(2)(B)(i)(II), is classified to section 80a-2(a)(32) of Title 15, Commerce and Trade.

AMENDMENTS

1997—Subsecs. (a)(2)(B), (c)(6). Pub. L. 105-34 substituted “section 751(d)” for “section 751(d)(2)”.

1994—Subsecs. (c), (d). Pub. L. 103-465 added subsec. (c) and redesignated former subsec. (c) as (d).

1992—Subsec. (c). Pub. L. 102-486 substituted “, section 751” for “and section 751” and inserted before period at end “, and section 737 (relating to recognition of precontribution gain in case of certain distributions)”.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to sales, exchanges, and distributions after Aug. 5, 1997, but not applicable to any sale or exchange pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange, see section 1062(c) of Pub. L. 105-34, set out as a note under section 724 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 741(c) of Pub. L. 103-465 provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 737 of this title] shall apply to distributions after the date of the enactment of this Act [Dec. 8, 1994].

“(2) CERTAIN DISTRIBUTIONS BEFORE JANUARY 1, 1995.—The amendments made by this section shall not apply to any marketable security distributed before January 1, 1995, by the partnership which held such security on July 27, 1994.

“(3) DISTRIBUTIONS IN LIQUIDATION OF PARTNER'S INTEREST.—The amendments made by this section shall not apply to the distribution of a marketable security in liquidation of a partner's interest in a partnership if—

“(A) such liquidation is pursuant to a written contract which was binding on July 15, 1994, and at all times thereafter before the distribution, and

“(B) such contract provides for the purchase of such interest not later than a date certain for—

- “(i) a fixed value of marketable securities that are specified in the contract, or
- “(ii) other property.

The preceding sentence shall not apply if the partner has the right to elect that such distribution be made other than in marketable securities.

“(4) DISTRIBUTIONS IN COMPLETE LIQUIDATION OF PUBLICLY TRADED PARTNERSHIPS.—

“(A) IN GENERAL.—The amendments made by this section shall not apply to the distribution of a marketable security in a qualified partnership liquidation if—

“(i) the marketable securities were received by the partnership in a nonrecognition transaction in exchange for substantially all of the assets of the partnership,

“(ii) the marketable securities are distributed by the partnership within 90 days after their receipt by the partnership, and

“(iii) the partnership is liquidated before the beginning of the 1st taxable year of the partnership beginning after December 31, 1997.

“(B) QUALIFIED PARTNERSHIP LIQUIDATION.—For purposes of subparagraph (A), the term ‘qualified partnership liquidation’ means—

“(i) a complete liquidation of a publicly traded partnership (as defined in section 7704(b) of the Internal Revenue Code of 1986) which is an existing partnership (as defined in section 10211(c)(2) of the Revenue Act of 1987 [Pub. L. 100-203, set out as an Effective Date note under section 7704 of this title]), and

“(ii) a complete liquidation of a partnership which is related to a partnership described in clause (i) if such liquidation is related to a complete liquidation of the partnership described in clause (i).”

“(5) MARKETABLE SECURITIES.—For purposes of this subsection, the term ‘marketable securities’ has the meaning given such term by section 731(c) of the Internal Revenue Code of 1986, as added by this section.”

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-486 applicable to distributions on or after June 25, 1992, see section 1937(c) of Pub. L. 102-486, set out as a note under section 704 of this title.

### § 732. Basis of distributed property other than money

#### (a) Distributions other than in liquidation of a partner's interest

##### (1) General rule

The basis of property (other than money) distributed by a partnership to a partner other than in liquidation of the partner's interest shall, except as provided in paragraph (2), be its adjusted basis to the partnership immediately before such distribution.

##### (2) Limitation

The basis to the distributee partner of property to which paragraph (1) is applicable shall not exceed the adjusted basis of such partner's interest in the partnership reduced by any money distributed in the same transaction.

#### (b) Distributions in liquidation

The basis of property (other than money) distributed by a partnership to a partner in liquidation of the partner's interest shall be an amount equal to the adjusted basis of such partner's interest in the partnership reduced by any money distributed in the same transaction.

#### (c) Allocation of basis

##### (1) In general

The basis of distributed properties to which subsection (a)(2) or (b) is applicable shall be allocated—

(A)(i) first to any unrealized receivables (as defined in section 751(c)) and inventory items (as defined in section 751(d)) in an amount equal to the adjusted basis of each such property to the partnership, and

(ii) if the basis to be allocated is less than the sum of the adjusted bases of such properties to the partnership, then, to the extent any decrease is required in order to have the adjusted bases of such properties equal the basis to be allocated, in the manner provided in paragraph (3), and

(B) to the extent of any basis remaining after the allocation under subparagraph (A), to other distributed properties—

(i) first by assigning to each such other property such other property's adjusted basis to the partnership, and

(ii) then, to the extent any increase or decrease in basis is required in order to have the adjusted bases of such other distributed properties equal such remaining basis, in the manner provided in paragraph (2) or (3), whichever is appropriate.

#### (2) Method of allocating increase

Any increase required under paragraph (1)(B) shall be allocated among the properties—

(A) first to properties with unrealized appreciation in proportion to their respective amounts of unrealized appreciation before such increase (but only to the extent of each property's unrealized appreciation), and

(B) then, to the extent such increase is not allocated under subparagraph (A), in proportion to their respective fair market values.

#### (3) Method of allocating decrease

Any decrease required under paragraph (1)(A) or (1)(B) shall be allocated—

(A) first to properties with unrealized depreciation in proportion to their respective amounts of unrealized depreciation before such decrease (but only to the extent of each property's unrealized depreciation), and

(B) then, to the extent such decrease is not allocated under subparagraph (A), in proportion to their respective adjusted bases (as adjusted under subparagraph (A)).

#### (d) Special partnership basis to transferee

For purposes of subsections (a), (b), and (c), a partner who acquired all or a part of his interest by a transfer with respect to which the election provided in section 754 is not in effect, and to whom a distribution of property (other than money) is made with respect to the transferred interest within 2 years after such transfer, may elect, under regulations prescribed by the Secretary, to treat as the adjusted partnership basis of such property the adjusted basis such property would have if the adjustment provided in section 743(b) were in effect with respect to the partnership property. The Secretary may by regulations require the application of this subsection in the case of a distribution to a transferee partner, whether or not made within 2 years after the transfer, if at the time of the transfer the fair market value of the partnership property (other than money) exceeded 110 percent of its adjusted basis to the partnership.

#### (e) Exception

This section shall not apply to the extent that a distribution is treated as a sale or exchange of property under section 751(b) (relating to unrealized receivables and inventory items).

#### (f) Corresponding adjustment to basis of assets of a distributed corporation controlled by a corporate partner

##### (1) In general

If—

(A) a corporation (hereafter in this subsection referred to as the “corporate partner”) receives a distribution from a partnership of stock in another corporation (hereafter in this subsection referred to as the “distributed corporation”),

(B) the corporate partner has control of the distributed corporation immediately

after the distribution or at any time thereafter, and

(C) the partnership's adjusted basis in such stock immediately before the distribution exceeded the corporate partner's adjusted basis in such stock immediately after the distribution,

then an amount equal to such excess shall be applied to reduce (in accordance with subsection (c)) the basis of property held by the distributed corporation at such time (or, if the corporate partner does not control the distributed corporation at such time, at the time the corporate partner first has such control).

**(2) Exception for certain distributions before control acquired**

Paragraph (1) shall not apply to any distribution of stock in the distributed corporation if—

(A) the corporate partner does not have control of such corporation immediately after such distribution, and

(B) the corporate partner establishes to the satisfaction of the Secretary that such distribution was not part of a plan or arrangement to acquire control of the distributed corporation.

**(3) Limitations on basis reduction**

**(A) In general**

The amount of the reduction under paragraph (1) shall not exceed the amount by which the sum of the aggregate adjusted bases of the property and the amount of money of the distributed corporation exceeds the corporate partner's adjusted basis in the stock of the distributed corporation.

**(B) Reduction not to exceed adjusted basis of property**

No reduction under paragraph (1) in the basis of any property shall exceed the adjusted basis of such property (determined without regard to such reduction).

**(4) Gain recognition where reduction limited**

If the amount of any reduction under paragraph (1) (determined after the application of paragraph (3)(A)) exceeds the aggregate adjusted bases of the property of the distributed corporation—

(A) such excess shall be recognized by the corporate partner as long-term capital gain, and

(B) the corporate partner's adjusted basis in the stock of the distributed corporation shall be increased by such excess.

**(5) Control**

For purposes of this subsection, the term "control" means ownership of stock meeting the requirements of section 1504(a)(2).

**(6) Indirect distributions**

For purposes of paragraph (1), if a corporation acquires (other than in a distribution from a partnership) stock the basis of which is determined (by reason of being distributed from a partnership) in whole or in part by reference to subsection (a)(2) or (b), the corporation shall be treated as receiving a distribution of such stock from a partnership.

**(7) Special rule for stock in controlled corporation**

If the property held by a distributed corporation is stock in a corporation which the distributed corporation controls, this subsection shall be applied to reduce the basis of the property of such controlled corporation. This subsection shall be reapplied to any property of any controlled corporation which is stock in a corporation which it controls.

**(8) Regulations**

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations to avoid double counting and to prevent the abuse of such purposes.

(Aug. 16, 1954, ch. 736, 68A Stat. 246; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105-34, title X, §§ 1061(a), 1062(b)(3), Aug. 5, 1997, 111 Stat. 945, 947; Pub. L. 106-170, title V, § 538(a), Dec. 17, 1999, 113 Stat. 1939.)

AMENDMENTS

1999—Subsec. (f). Pub. L. 106-170 added subsec. (f).

1997—Subsec. (c). Pub. L. 105-34, § 1061(a), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: "The basis of distributed properties to which subsection (a)(2) or subsection (b) is applicable shall be allocated—

"(1) first to any unrealized receivables (as defined in section 751(c)) and inventory items (as defined in section 751(d)(2)) in an amount equal to the adjusted basis of each such property to the partnership (or if the basis to be allocated is less than the sum of the adjusted bases of such properties to the partnership, in proportion to such bases), and

"(2) to the extent of any remaining basis, to any other distributed properties in proportion to their adjusted bases to the partnership."

Subsec. (c)(1)(A)(i). Pub. L. 105-34, § 1062(b)(3), substituted "section 751(d)" for "section 751(d)(2)".

1976—Subsec. (d). Pub. L. 94-455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-170, title V, § 538(b), Dec. 17, 1999, 113 Stat. 1940, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section [amending this section] shall apply to distributions made after July 14, 1999.

"(2) PARTNERSHIPS IN EXISTENCE ON JULY 14, 1999.—In the case of a corporation which is a partner in a partnership as of July 14, 1999, the amendment made by this section shall apply to any distribution made (or treated as made) to such partner from such partnership after June 30, 2001, except that this paragraph shall not apply to any distribution after the date of the enactment of this Act [Dec. 17, 1999] unless the partner makes an election to have this paragraph apply to such distribution on the partner's return of Federal income tax for the taxable year in which such distribution occurs."

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1061(b) of Pub. L. 105-34 provided that: "The amendment made by subsection (a) [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by section 1062(b)(3) of Pub. L. 105-34 applicable to sales, exchanges, and distributions after Aug. 5, 1997, but not applicable to any sale or exchange pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange, see section 1062(c) of Pub. L. 105-34, set out as a note under section 724 of this title.

**§ 733. Basis of distributee partner's interest**

In the case of a distribution by a partnership to a partner other than in liquidation of a partner's interest, the adjusted basis to such partner of his interest in the partnership shall be reduced (but not below zero) by—

- (1) the amount of any money distributed to such partner, and
- (2) the amount of the basis to such partner of distributed property other than money, as determined under section 732.

(Aug. 16, 1954, ch. 736, 68A Stat. 247.)

**§ 734. Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction****(a) General rule**

The basis of partnership property shall not be adjusted as the result of a distribution of property to a partner unless the election, provided in section 754 (relating to optional adjustment to basis of partnership property), is in effect with respect to such partnership or unless there is a substantial basis reduction with respect to such distribution.

**(b) Method of adjustment**

In the case of a distribution of property to a partner by a partnership with respect to which the election provided in section 754 is in effect or with respect to which there is a substantial basis reduction, the partnership shall—

- (1) increase the adjusted basis of partnership property by—

- (A) the amount of any gain recognized to the distributee partner with respect to such distribution under section 731(a)(1), and

- (B) in the case of distributed property to which section 732(a)(2) or (b) applies, the excess of the adjusted basis of the distributed property to the partnership immediately before the distribution (as adjusted by section 732(d)) over the basis of the distributed property to the distributee, as determined under section 732, or

- (2) decrease the adjusted basis of partnership property by—

- (A) the amount of any loss recognized to the distributee partner with respect to such distribution under section 731(a)(2), and

- (B) in the case of distributed property to which section 732(b) applies, the excess of the basis of the distributed property to the distributee, as determined under section 732, over the adjusted basis of the distributed property to the partnership immediately before such distribution (as adjusted by section 732(d)).

Paragraph (1)(B) shall not apply to any distributed property which is an interest in another partnership with respect to which the election provided in section 754 is not in effect.

**(c) Allocation of basis**

The allocation of basis among partnership properties where subsection (b) is applicable shall be made in accordance with the rules provided in section 755.

**(d) Substantial basis reduction****(1) In general**

For purposes of this section, there is a substantial basis reduction with respect to a distribution if the sum of the amounts described in subparagraphs (A) and (B) of subsection (b)(2) exceeds \$250,000.

**(2) Regulations**

For regulations to carry out this subsection, see section 743(d)(2).

**(e) Exception for securitization partnerships**

For purposes of this section, a securitization partnership (as defined in section 743(f)) shall not be treated as having a substantial basis reduction with respect to any distribution of property to a partner.

(Aug. 16, 1954, ch. 736, 68A Stat. 247; Pub. L. 98-369, div. A, title I, §78(a), July 18, 1984, 98 Stat. 597; Pub. L. 108-357, title VIII, §833(c)(1)–(5)(A), Oct. 22, 2004, 118 Stat. 1591, 1592; Pub. L. 109-135, title IV, §403(bb), Dec. 21, 2005, 119 Stat. 2630.)

**AMENDMENTS**

2005—Subsec. (a). Pub. L. 109-135, §403(bb)(1), inserted “with respect to such distribution” before period at end.

Subsec. (b). Pub. L. 109-135, §403(bb)(2), reenacted heading without change and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: “In the case of a distribution of property to a partner, a partnership, with respect to which the election provided in section 754 is in effect or unless there is a substantial basis reduction, shall—”.

2004—Pub. L. 108-357, §833(c)(5)(A), substituted “Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction” for “Optional adjustment to basis of undistributed partnership property” in section catchline.

Subsec. (a). Pub. L. 108-357, §833(c)(1), inserted “or unless there is a substantial basis reduction” before period at end.

Subsec. (b). Pub. L. 108-357, §833(c)(2), inserted “or unless there is a substantial basis reduction” after “section 754 is in effect” in introductory provisions.

Subsec. (d). Pub. L. 108-357, §833(c)(3), added subsec. (d).

Subsec. (e). Pub. L. 108-357, §833(c)(4), added subsec. (e).

1984—Subsec. (b). Pub. L. 98-369 inserted at end “Paragraph (1)(B) shall not apply to any distributed property which is an interest in another partnership with respect to which the election provided in section 754 is not in effect.”

**EFFECTIVE DATE OF 2005 AMENDMENT**

Amendment by Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

**EFFECTIVE DATE OF 2004 AMENDMENT**

Pub. L. 108-357, title VIII, §833(d)(3), Oct. 22, 2004, 118 Stat. 1592, provided that: “The amendments made by subsection (c) [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 2004].”

**EFFECTIVE DATE OF 1984 AMENDMENT**

Section 78(b) of Pub. L. 98-369 provided that: “The amendment made by subsection (a) [amending this sec-



tion] shall apply to distributions after March 1, 1984, in taxable years ending after such date.”

**§ 735. Character of gain or loss on disposition of distributed property**

**(a) Sale or exchange of certain distributed property**

**(1) Unrealized receivables**

Gain or loss on the disposition by a distributee partner of unrealized receivables (as defined in section 751(c)) distributed by a partnership, shall be considered as ordinary income or as ordinary loss, as the case may be.

**(2) Inventory items**

Gain or loss on the sale or exchange by a distributee partner of inventory items (as defined in section 751(d)) distributed by a partnership shall, if sold or exchanged within 5 years from the date of the distribution, be considered as ordinary income or as ordinary loss, as the case may be.

**(b) Holding period for distributed property**

In determining the period for which a partner has held property received in a distribution from a partnership (other than for purposes of subsection (a)(2)), there shall be included the holding period of the partnership, as determined under section 1223, with respect to such property.

**(c) Special rules**

**(1) Waiver of holding periods contained in section 1231**

For purposes of this section, section 751(d) (defining inventory item) shall be applied without regard to any holding period in section 1231(b).

**(2) Substituted basis property**

**(A) In general**

If any property described in subsection (a) is disposed of in a nonrecognition transaction, the tax treatment which applies to such property under such subsection shall also apply to any substituted basis property resulting from such transaction. A similar rule shall also apply in the case of a series of nonrecognition transactions.

**(B) Exception for stock in C corporation**

Subparagraph (A) shall not apply to any stock in a C corporation received in an exchange described in section 351.

(Aug. 16, 1954, ch. 763, 68A Stat. 247; Pub. L. 94-455, title XIX, §1901(b)(3)(D), Oct. 4, 1976, 90 Stat. 1792; Pub. L. 98-369, div. A, title I, §74(b), July 18, 1984, 98 Stat. 593; Pub. L. 105-34, title X, §1062(b)(3), Aug. 5, 1997, 111 Stat. 947.)

AMENDMENTS

1997—Subsecs. (a)(2), (c)(1). Pub. L. 105-34 substituted “section 751(d)” for “section 751(d)(2)”.

1984—Subsec. (c). Pub. L. 98-369 added subsec. (c).

1976—Subsec. (a)(1), (2). Pub. L. 94-455 substituted “as ordinary income or as ordinary loss, as the case may be” for “gain or loss from the sale or exchange of property other than a capital asset”.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to sales, exchanges, and distributions after Aug. 5, 1997, but not

applicable to any sale or exchange pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange, see section 1062(c) of Pub. L. 105-34, set out as a note under section 724 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 74(d)(2) of Pub. L. 98-369 provided that: “The amendment made by subsection (b) [amending this section] shall apply to property distributed after March 31, 1984, in taxable years ending after such date.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

**§ 736. Payments to a retiring partner or a deceased partner's successor in interest**

**(a) Payments considered as distributive share or guaranteed payment**

Payments made in liquidation of the interest of a retiring partner or a deceased partner shall, except as provided in subsection (b), be considered—

(1) as a distributive share to the recipient of partnership income if the amount thereof is determined with regard to the income of the partnership, or

(2) as a guaranteed payment described in section 707(c) if the amount thereof is determined without regard to the income of the partnership.

**(b) Payments for interest in partnership**

**(1) General rule**

Payments made in liquidation of the interest of a retiring partner or a deceased partner shall, to the extent such payments (other than payments described in paragraph (2)) are determined, under regulations prescribed by the Secretary, to be made in exchange for the interest of such partner in partnership property, be considered as a distribution by the partnership and not as a distributive share or guaranteed payment under subsection (a).

**(2) Special rules**

For purposes of this subsection, payments in exchange for an interest in partnership property shall not include amounts paid for—

(A) unrealized receivables of the partnership (as defined in section 751(c)), or

(B) good will of the partnership, except to the extent that the partnership agreement provides for a payment with respect to good will.

**(3) Limitation on application of paragraph (2)**

Paragraph (2) shall apply only if—

(A) capital is not a material income-producing factor for the partnership, and

(B) the retiring or deceased partner was a general partner in the partnership.

(Aug. 16, 1954, ch. 736, 68A Stat. 248; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-600, title VII, §701(u)(13)(B), Nov. 6, 1978, 92 Stat. 2918; Pub. L. 103-66, title XIII, §13262(a), (b)(2)(B), Aug. 10, 1993, 107 Stat. 541.)

AMENDMENTS

1993—Subsec. (b)(3). Pub. L. 103-66, §13262(a), added par. (3).

Subsec. (c). Pub. L. 103-66, §13262(b)(2)(B), struck out heading and text of subsec. (c). Text read as follows: "For limitation on the tax attributable to certain gain connected with section 1248 stock, see section 751(e)."

1978—Subsec. (c). Pub. L. 95-600 added subsec. (c).

1976—Subsec. (b)(1). Pub. L. 94-455 struck out "or his delegate" after "Secretary".

#### EFFECTIVE DATE OF 1993 AMENDMENT

Section 13262(c) of Pub. L. 103-66 provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 751 of this title] shall apply in the case of partners retiring or dying on or after January 5, 1993.

"(2) BINDING CONTRACT EXCEPTION.—The amendments made by this section shall not apply to any partner retiring on or after January 5, 1993, if a written contract to purchase such partner's interest in the partnership was binding on January 4, 1993, and at all times thereafter before such purchase."

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to transfers beginning after Oct. 9, 1975, and to sales, exchanges, and distributions taking place after Oct. 9, 1975, see section 701(u)(13)(C) of Pub. L. 95-600, set out as a note under section 751 of this title.

### § 737. Recognition of precontribution gain in case of certain distributions to contributing partner

#### (a) General rule

In the case of any distribution by a partnership to a partner, such partner shall be treated as recognizing gain in an amount equal to the lesser of—

(1) the excess (if any) of (A) the fair market value of property (other than money) received in the distribution over (B) the adjusted basis of such partner's interest in the partnership immediately before the distribution reduced (but not below zero) by the amount of money received in the distribution, or

(2) the net precontribution gain of the partner.

Gain recognized under the preceding sentence shall be in addition to any gain recognized under section 731. The character of such gain shall be determined by reference to the proportionate character of the net precontribution gain.

#### (b) Net precontribution gain

For purposes of this section, the term "net precontribution gain" means the net gain (if any) which would have been recognized by the distributee partner under section 704(c)(1)(B) if all property which—

(1) had been contributed to the partnership by the distributee partner within 7 years of the distribution, and

(2) is held by such partnership immediately before the distribution,

had been distributed by such partnership to another partner.

#### (c) Basis rules

##### (1) Partner's interest

The adjusted basis of a partner's interest in a partnership shall be increased by the amount of any gain recognized by such partner under subsection (a). For purposes of determining the basis of the distributed property (other

than money), such increase shall be treated as occurring immediately before the distribution.

#### (2) Partnership's basis in contributed property

Appropriate adjustments shall be made to the adjusted basis of the partnership in the contributed property referred to in subsection (b) to reflect gain recognized under subsection (a).

#### (d) Exceptions

##### (1) Distributions of previously contributed property

If any portion of the property distributed consists of property which had been contributed by the distributee partner to the partnership, such property shall not be taken into account under subsection (a)(1) and shall not be taken into account in determining the amount of the net precontribution gain. If the property distributed consists of an interest in an entity, the preceding sentence shall not apply to the extent that the value of such interest is attributable to property contributed to such entity after such interest had been contributed to the partnership.

##### (2) Coordination with section 751

This section shall not apply to the extent section 751(b) applies to such distribution.

#### (e) Marketable securities treated as money

**For treatment of marketable securities as money for purposes of this section, see section 731(c).**

(Added Pub. L. 102-486, title XIX, §1937(a), Oct. 24, 1992, 106 Stat. 3032; amended Pub. L. 103-465, title VII, §741(b), Dec. 8, 1994, 108 Stat. 5009; Pub. L. 104-188, title I, §1704(j)(8), Aug. 20, 1996, 110 Stat. 1882; Pub. L. 105-34, title X, §1063(a), Aug. 5, 1997, 111 Stat. 947.)

#### AMENDMENTS

1997—Subsec. (b)(1). Pub. L. 105-34 substituted "7 years" for "5 years".

1996—Pub. L. 104-188 provided that section 1937(a) of Pub. L. 102-486, shall be applied as if "Subpart B" appeared instead of "Subpart C". Section 1937(a) of Pub. L. 102-486 directed amendment of subpart C of this part by adding this section at the end thereof.

1994—Subsec. (c)(1). Pub. L. 103-465, §741(b)(1), amended last sentence generally. Prior to amendment, last sentence read as follows: "Except for purposes of determining the amount recognized under subsection (a), such increase shall be treated as occurring immediately before the distribution."

Subsec. (e). Pub. L. 103-465, §741(b)(2), added subsec. (e).

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to property contributed to a partnership after June 8, 1997, but not applicable to any property contributed pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such contribution if such contract provides for the contribution of a fixed amount of property, see section 1063(b) of Pub. L. 105-34, set out as a note under section 704 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 applicable to distributions after Dec. 8, 1994, and not applicable to certain distributions before Jan. 1, 1995, distributions in liquidation of partner's interest, or distributions in complete liquidation of publicly traded partnerships, see section 741(c) of Pub. L. 103-465, set out as a note under section 731 of this title.

## EFFECTIVE DATE

Section applicable to distributions on or after June 25, 1992, see section 1937(c) of Pub. L. 102-486, set out as an Effective Date of 1992 Amendment note under section 704 of this title.

## SUBPART C—TRANSFERS OF INTERESTS IN A PARTNERSHIP

Sec.	
741.	Recognition and character of gain or loss on sale or exchange.
742.	Basis of transferee partner's interest.
743.	Special rules where section 754 election or substantial built-in loss.

## AMENDMENTS

2004—Pub. L. 108-357, title VIII, §833(b)(6)(B), Oct. 22, 2004, 118 Stat. 1591, substituted “Special rules where section 754 election or substantial built-in loss” for “Optional adjustment to basis of partnership property” in item 743.

**§ 741. Recognition and character of gain or loss on sale or exchange**

In the case of a sale or exchange of an interest in a partnership, gain or loss shall be recognized to the transferor partner. Such gain or loss shall be considered as gain or loss from the sale or exchange of a capital asset, except as otherwise provided in section 751 (relating to unrealized receivables and inventory items).

(Aug. 16, 1954, ch. 736, 68A Stat. 248; Pub. L. 107-147, title IV, §417(12), Mar. 9, 2002, 116 Stat. 56.)

## AMENDMENTS

2002—Pub. L. 107-147 struck out “which have appreciated substantially in value” after “inventory items”.

**§ 742. Basis of transferee partner's interest**

The basis of an interest in a partnership acquired other than by contribution shall be determined under part II of subchapter O (sec. 1011 and following).

(Aug. 16, 1954, ch. 736, 68A Stat. 249.)

**§ 743. Special rules where section 754 election or substantial built-in loss****(a) General rule**

The basis of partnership property shall not be adjusted as the result of a transfer of an interest in a partnership by sale or exchange or on the death of a partner unless the election provided by section 754 (relating to optional adjustment to basis of partnership property) is in effect with respect to such partnership or unless the partnership has a substantial built-in loss immediately after such transfer.

**(b) Adjustment to basis of partnership property**

In the case of a transfer of an interest in a partnership by sale or exchange or upon the death of a partner, a partnership with respect to which the election provided in section 754 is in effect or which has a substantial built-in loss immediately after such transfer shall—

- (1) increase the adjusted basis of the partnership property by the excess of the basis to the transferee partner of his interest in the partnership over his proportionate share of the adjusted basis of the partnership property, or

- (2) decrease the adjusted basis of the partnership property by the excess of the transferee partner's proportionate share of the adjusted basis of the partnership property over the basis of his interest in the partnership.

Under regulations prescribed by the Secretary, such increase or decrease shall constitute an adjustment to the basis of partnership property with respect to the transferee partner only. A partner's proportionate share of the adjusted basis of partnership property shall be determined in accordance with his interest in partnership capital and, in the case of property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share. In the case of an adjustment under this subsection to the basis of partnership property subject to depletion, any depletion allowable shall be determined separately for the transferee partner with respect to his interest in such property.

**(c) Allocation of basis**

The allocation of basis among partnership properties where subsection (b) is applicable shall be made in accordance with the rules provided in section 755.

**(d) Substantial built-in loss****(1) In general**

For purposes of this section, a partnership has a substantial built-in loss with respect to a transfer of an interest in a partnership if the partnership's adjusted basis in the partnership property exceeds by more than \$250,000 the fair market value of such property.

**(2) Regulations**

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of paragraph (1) and section 734(d), including regulations aggregating related partnerships and disregarding property acquired by the partnership in an attempt to avoid such purposes.

**(e) Alternative rules for electing investment partnerships****(1) No adjustment of partnership basis**

For purposes of this section, an electing investment partnership shall not be treated as having a substantial built-in loss with respect to any transfer occurring while the election under paragraph (6)(A) is in effect.

**(2) Loss deferral for transferee partner**

In the case of a transfer of an interest in an electing investment partnership, the transferee partner's distributive share of losses (without regard to gains) from the sale or exchange of partnership property shall not be allowed except to the extent that it is established that such losses exceed the loss (if any) recognized by the transferor (or any prior transferor to the extent not fully offset by a prior disallowance under this paragraph) on the transfer of the partnership interest.

**(3) No reduction in partnership basis**

Losses disallowed under paragraph (2) shall not decrease the transferee partner's basis in the partnership interest.

**(4) Effect of termination of partnership**

This subsection shall be applied without regard to any termination of a partnership under section 708(b)(1)(B).

**(5) Certain basis reductions treated as losses**

In the case of a transferee partner whose basis in property distributed by the partnership is reduced under section 732(a)(2), the amount of the loss recognized by the transferor on the transfer of the partnership interest which is taken into account under paragraph (2) shall be reduced by the amount of such basis reduction.

**(6) Electing investment partnership**

For purposes of this subsection, the term “electing investment partnership” means any partnership if—

(A) the partnership makes an election to have this subsection apply,

(B) the partnership would be an investment company under section 3(a)(1)(A) of the Investment Company Act of 1940 but for an exemption under paragraph (1) or (7) of section 3(c) of such Act,

(C) such partnership has never been engaged in a trade or business,

(D) substantially all of the assets of such partnership are held for investment,

(E) at least 95 percent of the assets contributed to such partnership consist of money,

(F) no assets contributed to such partnership had an adjusted basis in excess of fair market value at the time of contribution,

(G) all partnership interests of such partnership are issued by such partnership pursuant to a private offering before the date which is 24 months after the date of the first capital contribution to such partnership,

(H) the partnership agreement of such partnership has substantive restrictions on each partner's ability to cause a redemption of the partner's interest, and

(I) the partnership agreement of such partnership provides for a term that is not in excess of 15 years.

The election described in subparagraph (A), once made, shall be irrevocable except with the consent of the Secretary.

**(7) Regulations**

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including regulations for applying this subsection to tiered partnerships.

**(f) Exception for securitization partnerships****(1) No adjustment of partnership basis**

For purposes of this section, a securitization partnership shall not be treated as having a substantial built-in loss with respect to any transfer.

**(2) Securitization partnership**

For purposes of paragraph (1), the term “securitization partnership” means any partnership the sole business activity of which is to issue securities which provide for a fixed principal (or similar) amount and which are

primarily serviced by the cash flows of a discrete pool (either fixed or revolving) of receivables or other financial assets that by their terms convert into cash in a finite period, but only if the sponsor of the pool reasonably believes that the receivables and other financial assets comprising the pool are not acquired so as to be disposed of.

(Aug. 16, 1954, ch. 736, 68A Stat. 249; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title I, § 71(b), July 18, 1984, 98 Stat. 589; Pub. L. 108-357, title VIII, § 833(b)(1)–(4)(A), (5), (6)(A), Oct. 22, 2004, 118 Stat. 1589, 1591.)

## REFERENCES IN TEXT

Section 3(a)(1)(A), (c)(1), (7) of the Investment Company Act of 1940, referred to in subsec. (e)(6)(B), is classified to section 80a-3(a)(1)(A), (c)(1), (7) of Title 15, Commerce and Trade.

## AMENDMENTS

2004—Pub. L. 108-357, § 833(b)(6)(A), substituted “Special rules where section 754 election or substantial built-in loss” for “Optional adjustment to basis of partnership property” in section catchline.

Subsec. (a). Pub. L. 108-357, § 833(b)(1), inserted “or unless the partnership has a substantial built-in loss immediately after such transfer” before period at end.

Subsec. (b). Pub. L. 108-357, § 833(b)(2), inserted “or which has a substantial built-in loss immediately after such transfer” after “section 754 is in effect” in introductory provisions.

Subsec. (d). Pub. L. 108-357, § 833(b)(3), added subsec. (d).

Subsec. (e). Pub. L. 108-357, § 833(b)(4)(A), added subsec. (e).

Subsec. (f). Pub. L. 108-357, § 833(b)(5), added subsec. (f).

1984—Subsec. (b). Pub. L. 98-369 substituted “property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share” for “an agreement described in section 704(c)(2) (relating to effect of partnership agreement on contributed property), such share shall be determined by taking such agreement into account” in penultimate sentence.

1976—Subsec. (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

## EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, § 833(d)(2), Oct. 22, 2004, 118 Stat. 1592, provided that:

“(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (b) [amending this section and section 6031 of this title] shall apply to transfers after the date of the enactment of this Act [Oct. 22, 2004].

“(B) TRANSITION RULE.—In the case of an electing investment partnership which is in existence on June 4, 2004, section 743(e)(6)(H) of the Internal Revenue Code of 1986, as added by this section, shall not apply to such partnership and section 743(e)(6)(I) of such Code, as so added, shall be applied by substituting ‘20 years’ for ‘15 years’.”

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to property contributed to the partnership after Mar. 31, 1984, in taxable years ending after such date, see section 71(c) of Pub. L. 98-369, set out as a note under section 704 of this title.

## SUBPART D—PROVISIONS COMMON TO OTHER SUBPARTS

Sec.

751. Unrealized receivables and inventory items.

- Sec.  
752. Treatment of certain liabilities.  
753. Partner receiving income in respect of decedent.  
754. Manner of electing optional adjustment to basis of partnership property.  
755. Rules for allocation of basis.

## § 751. Unrealized receivables and inventory items

### (a) Sale or exchange of interest in partnership

The amount of any money, or the fair market value of any property, received by a transferor partner in exchange for all or a part of his interest in the partnership attributable to—

- (1) unrealized receivables of the partnership,  
or  
(2) inventory items of the partnership,

shall be considered as an amount realized from the sale or exchange of property other than a capital asset.

### (b) Certain distributions treated as sales or exchanges

#### (1) General rule

To the extent a partner receives in a distribution—

- (A) partnership property which is—  
(i) unrealized receivables, or  
(ii) inventory items which have appreciated substantially in value,

in exchange for all or a part of his interest in other partnership property (including money), or

- (B) partnership property (including money) other than property described in subparagraph (A)(i) or (ii) in exchange for all or a part of his interest in partnership property described in subparagraph (A)(i) or (ii),

such transactions shall, under regulations prescribed by the Secretary, be considered as a sale or exchange of such property between the distributee and the partnership (as constituted after the distribution).

#### (2) Exceptions

Paragraph (1) shall not apply to—

- (A) a distribution of property which the distributee contributed to the partnership, or  
(B) payments, described in section 736(a), to a retiring partner or successor in interest of a deceased partner.

### (3) Substantial appreciation

For purposes of paragraph (1)—

#### (A) In general

Inventory items of the partnership shall be considered to have appreciated substantially in value if their fair market value exceeds 120 percent of the adjusted basis to the partnership of such property.

#### (B) Certain property excluded

For purposes of subparagraph (A), there shall be excluded any inventory property if a principal purpose for acquiring such property was to avoid the provisions of this subsection relating to inventory items.

### (c) Unrealized receivables

For purposes of this subchapter, the term “unrealized receivables” includes, to the extent not

previously includible in income under the method of accounting used by the partnership, any rights (contractual or otherwise) to payment for—

- (1) goods delivered, or to be delivered, to the extent the proceeds therefrom would be treated as amounts received from the sale or exchange of property other than a capital asset,  
or  
(2) services rendered, or to be rendered.

For purposes of this section and,<sup>1</sup> sections 731, 732, and 741 (but not for purposes of section 736), such term also includes mining property (as defined in section 617(f)(2)), stock in a DISC (as described in section 992(a)), section 1245 property (as defined in section 1245(a)(3)), stock in certain foreign corporations (as described in section 1248), section 1250 property (as defined in section 1250(c)), farm land (as defined in section 1252(a)), franchises, trademarks, or trade names (referred to in section 1253(a)), and an oil, gas, or geothermal property (described in section 1254) but only to the extent of the amount which would be treated as gain to which section 617(d)(1), 995(c), 1245(a), 1248(a), 1250(a), 1252(a), 1253(a), or 1254(a) would apply if (at the time of the transaction described in this section or section 731, 732, or 741, as the case may be) such property had been sold by the partnership at its fair market value. For purposes of this section and,<sup>1</sup> sections 731, 732, and 741 (but not for purposes of section 736), such term also includes any market discount bond (as defined in section 1278) and any short-term obligation (as defined in section 1283) but only to the extent of the amount which would be treated as ordinary income if (at the time of the transaction described in this section or section 731, 732, or 741, as the case may be) such property had been sold by the partnership.

### (d) Inventory items

For purposes of this subchapter, the term “inventory items” means—

- (1) property of the partnership of the kind described in section 1221(a)(1),  
(2) any other property of the partnership which, on sale or exchange by the partnership, would be considered property other than a capital asset and other than property described in section 1231, and  
(3) any other property held by the partnership which, if held by the selling or distributee partner, would be considered property of the type described in paragraph (1) or (2).

### (e) Limitation on tax attributable to deemed sales of section 1248 stock

For purposes of applying this section and sections 731 and 741 to any amount resulting from the reference to section 1248(a) in the second sentence of subsection (c), in the case of an individual, the tax attributable to such amount shall be limited in the manner provided by subsection (b) of section 1248 (relating to gain from certain sales or exchanges of stock in certain foreign corporation).

### (f) Special rules in the case of tiered partnerships, etc.

In determining whether property of a partnership is—

<sup>1</sup> So in original. The comma probably should not appear.

- (1) an unrealized receivable, or
- (2) an inventory item,

such partnership shall be treated as owning its proportionate share of the property of any other partnership in which it is a partner. Under regulations, rules similar to the rules of the preceding sentence shall also apply in the case of interests in trusts.

(Aug. 16, 1954, ch. 736, 68A Stat. 250; Pub. L. 87-834, §§ 13(f)(1), 14(b)(2), Oct. 16, 1962, 76 Stat. 1035, 1041; Pub. L. 88-272, title II, § 231(b)(6), Feb. 26, 1964, 78 Stat. 105; Pub. L. 89-570, § 1(c), Sept. 12, 1966, 80 Stat. 762; Pub. L. 91-172, title II, § 211(b)(6), Dec. 30, 1969, 83 Stat. 570; Pub. L. 94-455, title II, § 205(b), title X, § 1042(c)(2), title XI, § 1101(d)(2), title XIX, §§ 1901(a)(93), 1906(b)(13)(A), title XXI, § 2110(a), Oct. 4, 1976, 90 Stat. 1535, 1637, 1658, 1780, 1834, 1905; Pub. L. 95-600, title VII, § 701(u)(13)(A), Nov. 6, 1978, 92 Stat. 2918; Pub. L. 95-618, title IV, § 402(c)(5), Nov. 9, 1978, 92 Stat. 3202; Pub. L. 97-448, title I, § 102(a)(6), Jan. 12, 1983, 96 Stat. 2368; Pub. L. 98-369, div. A, title I, §§ 43(c)(3), 76(a), title IV, § 492(b)(4), July 18, 1984, 98 Stat. 558, 595, 854; Pub. L. 99-514, title II, § 201(d)(10), title XVIII, § 1899A(19), Oct. 22, 1986, 100 Stat. 2141, 2959; Pub. L. 103-66, title XIII, §§ 13206(e)(1), 13262(b)(1), (2)(A), Aug. 10, 1993, 107 Stat. 467, 541; Pub. L. 105-34, title X, § 1062(a)-(b)(2), Aug. 5, 1997, 111 Stat. 946, 947; Pub. L. 105-206, title VI, § 6010(m), July 22, 1998, 112 Stat. 816; Pub. L. 106-170, title V, § 532(c)(2)(F), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 108-357, title IV, § 413(c)(11), Oct. 22, 2004, 118 Stat. 1507.)

#### AMENDMENTS

2004—Subsec. (d)(2) to (4). Pub. L. 108-357 inserted “and” at end of par. (2), redesignated par. (4) as (3) and substituted “paragraph (1) or (2)” for “paragraph (1), (2), or (3)”, and struck out former par. (3) which read as follows: “any other property of the partnership which, if sold or exchanged by the partnership, would result in a gain taxable under subsection (a) of section 1246 (relating to gain on foreign investment company stock), and”.

1999—Subsec. (d)(1). Pub. L. 106-170 substituted “section 1221(a)(1)” for “section 1221(1)”.

1998—Subsec. (c). Pub. L. 105-206 substituted “731, 732,” for “731” wherever appearing in concluding provisions.

1997—Subsec. (a)(2). Pub. L. 105-34, § 1062(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “inventory items of the partnership which have appreciated substantially in value.”

Subsec. (b)(1). Pub. L. 105-34, § 1062(b)(1)(A), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

“(A) partnership property described in subsection (a)(1) or (2) in exchange for all or a part of his interest in other partnership property (including money), or

“(B) partnership property (including money) other than property described in subsection (a)(1) or (2) in exchange for all or a part of his interest in partnership property described in subsection (a)(1) or (2).”

Subsec. (b)(3). Pub. L. 105-34, § 1062(b)(1)(B), added par. (3).

Subsec. (d). Pub. L. 105-34, § 1062(b)(2), amended heading and text of subsec. (d) generally. Prior to amendment, subsec. (d) consisted of pars. (1) and (2) relating to inventory items which have appreciated substantially in value.

1993—Subsec. (c). Pub. L. 103-66, § 13262(b)(1), in concluding provisions, substituted “section 731 or 741” for “section 731, 736, or 741” in two places and “, sections

731 and 741 (but not for purposes of section 736)” for “sections 731, 736, and 741” in two places.

Subsec. (d)(1). Pub. L. 103-66, § 13206(e)(1), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: “Inventory items of the partnership shall be considered to have appreciated substantially in value if their fair market value exceeds—

“(A) 120 percent of the adjusted basis to the partnership of such property, and

“(B) 10 percent of the fair market value of all partnership property, other than money.”

Subsec. (e). Pub. L. 103-66, § 13262(b)(2)(A), substituted “sections 731 and 741” for “sections 731, 736, and 741”.

1986—Subsec. (c). Pub. L. 99-514, § 1899A(19), substituted “section 617(f)(2), stock” for “section 617(f)(2), stock” in second sentence.

Pub. L. 99-514, § 201(d)(10), struck out “section 1245 recovery property (as defined in section 1245(a)(5)),” before “stock in certain foreign corporations” in second sentence.

1984—Subsec. (c). Pub. L. 98-369, § 492(b)(4), struck out “farm recapture property (as defined in section 1251(e)(1)),” before “farm land”, and “1251(c),” after “1250(a),” in second sentence.

Pub. L. 98-369, § 43(c)(3), inserted last sentence.

Subsec. (f). Pub. L. 98-369, § 76(a), added subsec. (f).

1983—Subsec. (c). Pub. L. 97-448 inserted reference to section 1245 recovery property (as defined in section 1245(a)(5)) in second sentence.

1978—Subsec. (c). Pub. L. 95-618 substituted “oil, gas, or geothermal property” for “oil or gas property” in second sentence.

Subsec. (e). Pub. L. 95-600 added subsec. (e).

1976—Subsec. (b)(1). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (c). Pub. L. 94-455, §§ 205(b), 1042(c)(2), 1101(d)(2), 1901(a)(93), 2110(a), in second sentence, inserted reference to stock in a DISC (as described in section 992(a)), reference to stock in certain foreign corporations (as described in section 1248), and reference to farm land (as defined in section 1252(a)), franchises, trademarks or trade names (referred to in section 1253(a)), and an oil or gas property (described in section 1254), substituted “1252(a), 1253(a), or 1254(a)” for “or 1252(a)”, and inserted “1248(a),” after “1245(a),” and “995(c),” after “617(d)(1).”

1969—Subsec. (c). Pub. L. 91-172, in second sentence, substituted “section 1250 property (as defined in section 1250(c)), farm recapture property (as defined in section 1251(e)(1)), and farm land (as defined in section 1252(a))”, and “1250(a), 1251(c), or 1252(a)”, for “and section 1250 property (as defined in section 1250(c))” and “1250(a)”, respectively.

1966—Subsec. (c). Pub. L. 89-570, in second sentence, inserted reference to mining property (as defined in section 617(f)(2)) and to section 617(d)(1).

1964—Subsec. (c). Pub. L. 88-272, in second sentence, inserted reference to section 1250.

1962—Subsec. (c). Pub. L. 87-834, § 13(f)(1), defined “unrealized receivables” for purposes of this section and section 731, 736, and 741, as including section 1245 property, but only to the extent of the amount which would be treated as gain to which section 1245(a) would apply if (at the time of the transaction described in this section or section 731, 736, or 741, as the case may be) such property had been sold by the partnership at its fair market value.

Subsec. (d)(2). Pub. L. 87-834, § 14(b)(2), added subpar. (C), redesignated former subpar. (C) as (D), and substituted “subparagraph (A), (B), or (C)” for “subparagraph (A) or (B)”.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

## EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106-170, set out as a note under section 170 of this title.

## EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

## EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to sales, exchanges, and distributions after Aug. 5, 1997, but not applicable to any sale or exchange pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange, see section 1062(c) of Pub. L. 105-34, set out as a note under section 724 of this title.

## EFFECTIVE DATE OF 1993 AMENDMENT

Section 13206(e)(2) of Pub. L. 103-66 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to sales, exchanges, and distributions after April 30, 1993."

Amendment by section 13262(b)(1) and (2)(A) of Pub. L. 103-66 applicable in the case of partners retiring or dying on or after Jan. 5, 1993, with a binding contract exception, see section 13262(c) of Pub. L. 103-66, set out as a note under section 736 of this title.

## EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(10) of Pub. L. 99-514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99-514, set out as a note under section 168 of this title.

Amendment by section 201(d)(10) of Pub. L. 99-514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99-514, set out as a note under section 46 of this title.

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 43(c)(3) of Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

Section 76(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending this section] shall apply to distributions, sales, and exchanges made after March 31, 1984, in taxable years ending after such date."

Amendment by section 492(b)(4) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 492(d) of Pub. L. 98-369, set out as a note under section 170 of this title.

## EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

## EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-618 applicable with respect to wells commenced on or after Oct. 1, 1978, in taxable years ending on or after such date, see section 402(e) of Pub. L. 95-618, set out as a note under section 263 of this title.

Section 701(u)(13)(C) of Pub. L. 95-600 provided that: "The amendments made by this paragraph [amending

this section and section 736 of this title] shall apply to transfers beginning after October 9, 1975, and to sales, exchanges, and distributions taking place after such date."

## EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 205(b) of Pub. L. 94-455 effective for taxable years ending after Dec. 31, 1975, see section 205(e) of Pub. L. 94-455, set out as an Effective Date note under section 1254 of this title.

Amendment by section 1042(c)(2) of Pub. L. 94-455 applicable to transfers beginning after Oct. 9, 1975, and to sales, exchanges and distributions taking place after that date, see section 1042(e)(1) of Pub. L. 94-455, set out as a note under section 367 of this title.

Amendment by section 1101(d)(2) of Pub. L. 94-455 applicable to sales, exchanges, or other dispositions after Dec. 31, 1975, in taxable years ending after such date, see section 1101(g)(4) of Pub. L. 94-455, set out as a note under section 995 of this title.

Amendment by section 1901(a)(93) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

Section 2110(b) of Pub. L. 94-455, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Subsection (a) [amending this section] shall apply to transactions described in sections 731, 736, 741, or 751 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which occur after December 31, 1976, in taxable years ending after that date."

## EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 211(c) of Pub. L. 91-172, set out as a note under section 301 of this title.

## EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date see section 3 of Pub. L. 89-570, set out as an Effective Date note under section 617 of this title.

## EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88-272, set out as an Effective Date note under section 1250 of this title.

## EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 13(f)(1) of Pub. L. 87-834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87-834, set out as an Effective Date note under section 1245 of this title.

Amendment by section 14(b)(2) of Pub. L. 87-834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 14(c) of Pub. L. 87-834, set out as a note under section 312 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

## § 752. Treatment of certain liabilities

## (a) Increase in partner's liabilities

Any increase in a partner's share of the liabilities of a partnership, or any increase in a partner's individual liabilities by reason of the as-

sumption by such partner of partnership liabilities, shall be considered as a contribution of money by such partner to the partnership.

**(b) Decrease in partner's liabilities**

Any decrease in a partner's share of the liabilities of a partnership, or any decrease in a partner's individual liabilities by reason of the assumption by the partnership of such individual liabilities, shall be considered as a distribution of money to the partner by the partnership.

**(c) Liability to which property is subject**

For purposes of this section, a liability to which property is subject shall, to the extent of the fair market value of such property, be considered as a liability of the owner of the property.

**(d) Sale or exchange of an interest**

In the case of a sale or exchange of an interest in a partnership, liabilities shall be treated in the same manner as liabilities in connection with the sale or exchange of property not associated with partnerships.

(Aug. 16, 1954, ch. 736, 68A Stat. 251.)

OVERRULING OF RAPHAN CASE

Pub. L. 98-369, div. A, title I, § 79, July 18, 1984, 98 Stat. 597, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) GENERAL RULE.—Section 752 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (and the regulations prescribed thereunder) shall be applied without regard to the result reached in the case of *Raphan vs the United States*, 3 Cl. Ct. 457 (1983).

“(b) REGULATIONS.—In amending the regulations prescribed under section 752 of such Code to reflect subsection (a), the Secretary of the Treasury or his delegate shall prescribe regulations relating to liabilities, including the treatment of guarantees, assumptions, indemnity agreements, and similar arrangements.”

**§ 753. Partner receiving income in respect of decedent**

The amount includible in the gross income of a successor in interest of a deceased partner under section 736(a) shall be considered income in respect of a decedent under section 691.

(Aug. 16, 1954, ch. 736, 68A Stat. 251.)

**§ 754. Manner of electing optional adjustment to basis of partnership property**

If a partnership files an election, in accordance with regulations prescribed by the Secretary, the basis of partnership property shall be adjusted, in the case of a distribution of property, in the manner provided in section 734 and, in the case of a transfer of a partnership interest, in the manner provided in section 743. Such an election shall apply with respect to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year with respect to which such election was filed and all subsequent taxable years. Such election may be revoked by the partnership, subject to such limitations as may be provided by regulations prescribed by the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 251; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

**§ 755. Rules for allocation of basis**

**(a) General rule**

Any increase or decrease in the adjusted basis of partnership property under section 734(b) (relating to the optional adjustment to the basis of undistributed partnership property) or section 743(b) (relating to the optional adjustment to the basis of partnership property in the case of a transfer of an interest in a partnership) shall, except as provided in subsection (b), be allocated—

(1) in a manner which has the effect of reducing the difference between the fair market value and the adjusted basis of partnership properties, or

(2) in any other manner permitted by regulations prescribed by the Secretary.

**(b) Special rule**

In applying the allocation rules provided in subsection (a), increases or decreases in the adjusted basis of partnership property arising from a distribution of, or a transfer of an interest attributable to, property consisting of—

(1) capital assets and property described in section 1231(b), or

(2) any other property of the partnership,

shall be allocated to partnership property of a like character except that the basis of any such partnership property shall not be reduced below zero. If, in the case of a distribution, the adjustment to basis of property described in paragraph (1) or (2) is prevented by the absence of such property or by insufficient adjusted basis for such property, such adjustment shall be applied to subsequently acquired property of a like character in accordance with regulations prescribed by the Secretary.

**(c) No allocation of basis decrease to stock of corporate partner**

In making an allocation under subsection (a) of any decrease in the adjusted basis of partnership property under section 734(b)—

(1) no allocation may be made to stock in a corporation (or any person related (within the meaning of sections 267(b) and 707(b)(1)) to such corporation) which is a partner in the partnership, and

(2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property.

Gain shall be recognized to the partnership to the extent that the amount required to be allocated under paragraph (2) to other partnership property exceeds the aggregate adjusted basis of such other property immediately before the allocation required by paragraph (2).

(Aug. 16, 1954, ch. 736, 68A Stat. 252; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 108-357, title VIII, § 834(a), Oct. 22, 2004, 118 Stat. 1592.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108-357 added subsec. (c).



1976—Subsecs. (a), (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, §834(b), Oct. 22, 2004, 118 Stat. 1592, provided that: “The amendment made by this section [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 2004].”

### PART III—DEFINITIONS

Sec.  
761. Terms defined.

#### § 761. Terms defined

##### (a) Partnership

For purposes of this subtitle, the term “partnership” includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a corporation or a trust or estate. Under regulations the Secretary may, at the election of all the members of an unincorporated organization, exclude such organization from the application of all or part of this subchapter, if it is availed of—

- (1) for investment purposes only and not for the active conduct of a business,
- (2) for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted, or
- (3) by dealers in securities for a short period for the purpose of underwriting, selling, or distributing a particular issue of securities,

if the income of the members of the organization may be adequately determined without the computation of partnership taxable income.

##### (b) Partner

For purposes of this subtitle, the term “partner” means a member of a partnership.

##### (c) Partnership agreement

For purposes of this subchapter, a partnership agreement includes any modifications of the partnership agreement made prior to, or at, the time prescribed by law for the filing of the partnership return for the taxable year (not including extensions) which are agreed to by all the partners, or which are adopted in such other manner as may be provided by the partnership agreement.

##### (d) Liquidation of a partner's interest

For purposes of this subchapter, the term “liquidation of a partner's interest” means the termination of a partner's entire interest in a partnership by means of a distribution, or a series of distributions, to the partner by the partnership.

##### (e) Distributions of partnership interests treated as exchanges

Except as otherwise provided in regulations, for purposes of—

- (1) section 708 (relating to continuation of partnership),
- (2) section 743 (relating to optional adjustment to basis of partnership property), and
- (3) any other provision of this subchapter specified in regulations prescribed by the Secretary,

any distribution of an interest in a partnership (not otherwise treated as an exchange) shall be treated as an exchange.

#### (f) Qualified joint venture

##### (1) In general

In the case of a qualified joint venture conducted by a husband and wife who file a joint return for the taxable year, for purposes of this title—

(A) such joint venture shall not be treated as a partnership,

(B) all items of income, gain, loss, deduction, and credit shall be divided between the spouses in accordance with their respective interests in the venture, and

(C) each spouse shall take into account such spouse's respective share of such items as if they were attributable to a trade or business conducted by such spouse as a sole proprietor.

##### (2) Qualified joint venture

For purposes of paragraph (1), the term “qualified joint venture” means any joint venture involving the conduct of a trade or business if—

(A) the only members of such joint venture are a husband and wife,

(B) both spouses materially participate (within the meaning of section 469(h) without regard to paragraph (5) thereof) in such trade or business, and

(C) both spouses elect the application of this subsection.

#### (g) Cross reference

**For rules in the case of the sale, exchange, liquidation, or reduction of a partner's interest, see sections 704(b) and 706(c)(2).**

(Aug. 16, 1954, ch. 736, 68A Stat. 252; Pub. L. 94-455, title II, §213(c)(3)(B), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1548, 1834; Pub. L. 96-222, title I, §102(a)(2)(C), Apr. 1, 1980, 94 Stat. 208; Pub. L. 98-369, div. A, title I, §75(b), July 18, 1984, 98 Stat. 594; Pub. L. 99-514, title XVIII, §1805(c)(2), Oct. 22, 1986, 100 Stat. 2810; Pub. L. 110-28, title VIII, §8215(a), May 25, 2007, 121 Stat. 193.)

#### AMENDMENTS

2007—Subsecs. (f), (g). Pub. L. 110-28 added subsec. (f) and redesignated former subsec. (f) as (g).

1986—Subsec. (e). Pub. L. 99-514 substituted “Distributions of partnership interests” for “Distributions” in heading, substituted “Except as otherwise provided in regulations, for purposes of” for “For purposes of” in introductory provision, and “any distribution of an interest in a partnership” for “any distribution” in closing provisions.

1984—Subsecs. (e), (f). Pub. L. 98-369 added subsec. (e) and redesignated former subsec. (e) as (f).

1980—Subsec. (a)(3). Pub. L. 96-222 added par. (3).

1976—Subsec. (a). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (e). Pub. L. 94-455, §213(c)(3)(B), added subsec. (e).

#### EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-28, title VIII, §8215(c), May 25, 2007, 121 Stat. 194, provided that: “The amendments made by this section [amending this section, section 1402 of this title, and section 411 of Title 42, The Public Health and Welfare] shall apply to taxable years beginning after December 31, 2006.”